

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JOANNE ELIZABETH CLEVELAND,)
et al.,)
Plaintiff(s),)
v.)
COMPASS VISION INC., et al.,)
Defendant(s).)

No. C07-5642 BZ
Related Case: C07-3431 BZ
**ORDER SCHEDULING JURY TRIAL
AND PRETRIAL MATTERS**

Following the Case Management Conference, **IT IS HEREBY ORDERED** that the Case Management Statement is adopted, except as expressly modified by this Order. It is further **ORDERED** that:

1. TENTATIVE DATES

Trial Date: Monday, 5/11/2009, 20 days

Pretrial Conference: **Tuesday, 4/21/2009, 3:00 p.m.**

Last Day to Hear Dispositive Motions: **Wednesday, 3/18/2009**

Last Day for Expert Discovery: **Friday, 2/6/2009**

Last Day for Expert Disclosure: **Friday, 1/30/2009**

Close of Non-expert Discovery: **Friday, 1/23/2009**

1 A status conference is set for **September 15, 2008 at**
2 **3:00 p.m.** to discuss whether these cases should be
3 consolidated for trial. The final trial schedule will be set
4 at the conference. As discussed at the case management
5 conference, the parties shall meet and confer prior to the
6 conference to discuss the most efficient and appropriate way
7 to present these cases to a jury.

8 2. **DISCLOSURE AND DISCOVERY**

9 As discussed at the case management conference, the
10 parties are **ORDERED** to meet and confer regarding discovery
11 issues and stipulate to a discovery plan. By no later than
12 **April 15, 2008**, the parties shall file a proposed order
13 approving their stipulated discovery plan.

14 The parties are reminded that a failure to voluntarily
15 disclose information pursuant to Federal Rule of Civil
16 Procedure 26(a) or to supplement disclosures or discovery
17 responses pursuant to Rule 26(e) may result in exclusionary
18 sanctions. Thirty days prior to the close of non-expert
19 discovery, lead counsel for each party shall serve and file a
20 certification that all supplementation has been completed.

21 In the event a discovery dispute arises, **lead counsel** for
22 each party shall meet in person or, if counsel are outside the
23 Bay Area, by telephone and make a good faith effort to resolve
24 their dispute. Exchanging letters or telephone messages about
25 the dispute is insufficient. The Court does not read
26 subsequent positioning letters; parties shall instead make a
27 contemporaneous record of their meeting using a tape recorder
28 or a court reporter.

1 In the event they cannot resolve their dispute, the
2 parties must participate in a telephone conference with the
3 Court **before** filing any discovery motions or other papers.
4 The party seeking discovery shall request a conference in a
5 letter filed electronically not exceeding two pages (with no
6 attachments) which briefly explains the nature of the action
7 and the issues in dispute. Other parties shall reply in
8 similar fashion within two days of receiving the letter
9 requesting the conference. The Court will contact the parties
10 to schedule the conference.

11 3. MOTIONS

12 Consult Civil Local Rules 7-1 through 7-5 and this
13 Court's standing orders regarding motion practice. Motions
14 for **summary judgment** shall be accompanied by a statement of
15 the material facts not in dispute supported by citations to
16 admissible evidence. The parties shall file a joint statement
17 of undisputed facts where possible. If the parties are unable
18 to reach complete agreement after meeting and conferring, they
19 shall file a joint statement of the undisputed facts about
20 which they do agree. Any party may then file a separate
21 statement of the additional facts that the party contends are
22 undisputed. A party who without substantial justification
23 contends that a fact is in dispute is subject to sanctions.

24 A Chambers copy of all briefs shall be e-mailed in
25 WordPerfect or Word format to the following address:
26 bzpo@cand.uscourts.gov.

27 4. MEDIATION

28 By agreement of the parties, this matter has been

1 referred for an Mediation to be conducted by **August 1, 2008**.
2 The parties shall promptly notify the Court whether the case
3 is resolved at the Mediation.

4 5. SETTLEMENT

5 This case has been referred for assignment to a
6 Magistrate Judge to conduct a settlement conference in January
7 or February of 2009, in the event the case is not resolved at
8 the Mediation. Counsel will be contacted by that judge's
9 chambers with a date and time for the conference.

10 6. PRETRIAL CONFERENCE

11 Not less than thirty days prior to the date of the
12 pretrial conference, the parties shall meet and take all steps
13 necessary to fulfill the requirements of this Order.

14 Not less than twenty-one days prior to the pretrial
15 conference, the parties shall: (1) serve and file a joint
16 pretrial statement, containing the information listed in
17 **Attachment 1**, and a proposed pretrial order; (2) serve and
18 file trial briefs, Daubert motions, motions *in limine*,
19 proposed findings of fact and conclusions of law, and
20 statements designating excerpts from discovery that will be
21 offered at trial (specifying the witness and page and line
22 references); (3) exchange exhibits, agree on and number a
23 joint set of exhibits and number separately those exhibits to
24 which the parties cannot agree; (4) deliver all marked trial
25 exhibits directly to the courtroom clerk, Ms. Scott; (5)
26 deliver one extra set of all marked exhibits directly to
27 Chambers; and (6) submit all exhibits in three-ring binders.
28 Each exhibit shall be marked with an exhibit label as

1 contained in **Attachment 2**. The exhibits shall also be
2 separated with correctly marked side tabs so that they are
3 easy to find.

4 No party shall be permitted to call any witness or offer
5 any exhibit in its case in chief that is not disclosed at
6 pretrial, without leave of Court and for good cause.

7 Lead trial counsel for each party shall meet and confer
8 in an effort to resolve all disputes regarding anticipated
9 testimony, witnesses and exhibits. All Daubert motions,
10 motions *in limine*, and objections will be heard at the
11 pretrial conference. Not less than eleven days prior to the
12 pretrial conference, the parties shall serve and file any
13 objections to witnesses or exhibits or to the qualifications
14 of an expert witness. Daubert motions and motion *in limine*
15 shall be filed and served not less than twenty days prior to
16 the conference. Oppositions shall be filed and served not
17 less than eleven days prior to the conference. There shall be
18 no replies.

19 Not less than twenty-one days prior to the pretrial
20 conference the parties shall serve and file requested voir
21 dire questions, jury instructions, and forms of verdict. The
22 following jury instructions from the *Manual of Model Civil*
23 *Jury Instructions for the Ninth Circuit* (2007 ed.) will be
24 given absent objection: 1.1C, 1.2, 1.6-1.14, 1.18, 1.19, 2.11,
25 3.1-3.3. Do not submit a copy of these instructions. Counsel
26 shall submit a joint set of case specific instructions. Any
27 instructions on which the parties cannot agree may be
28 submitted separately. The Ninth Circuit Manual should be used

1 where possible. Each requested instruction shall be typed in
2 full on a separate page with citations to the authority upon
3 which it is based. Proposed jury instructions taken from the
4 Ninth Circuit Manual need only contain a citation to that
5 source. Any modifications made to proposed instructions taken
6 from a manual of model instructions must be clearly indicated.
7 In addition, all proposed jury instructions should conform to
8 the format of the Example Jury Instruction attached to this
9 Order. Not less than eleven days prior to the pretrial
10 conference, the parties shall serve and file any objections to
11 separately proposed jury instructions.

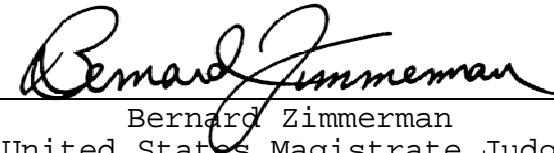
12 Jury instructions that the Court has given in prior cases
13 may be downloaded from the Northern District website at
14 <http://www.cand.uscourts.gov>. (Instructions are located on
15 the "Judge Information" page for Magistrate Judge Zimmerman.)
16 The Court will generally give the same instructions in cases
17 involving similar claims unless a party establishes, with
18 supporting authorities, that the instruction is no longer
19 correct or that a different instruction should be given.
20 CACI instructions generally will be given instead of BAJI
21 instructions.

22 All motions, proposed findings of fact and conclusions of
23 law and trial briefs shall be e-mailed in WordPerfect or Word
24 format to the following address: bzpo@cand.uscourts.gov

25 At the time of filing the original with the Clerk's
26 Office, two copies of all documents (but only one copy of the
27 exhibits) shall be delivered directly to Chambers (Room 15-
28 6688). Chambers' copies of all pretrial documents shall be

1 three-hole punched at the side, suitable for insertion
2 into standard, three-ring binders.

3 Dated: March 27, 2008

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5 Bernard Zimmerman
6 United States Magistrate Judge

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ATTACHMENT 1

The parties shall file a joint pretrial conference statement containing the following information:

(1) The Action.

- (A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.
 - (B) Relief Prayed. A detailed statement of each party's position on the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

(2) The Factual Basis of the Action.

- (A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.
 - (B) Disputed Factual Issues. A plain and concise statement of all disputed factual issues which remain to be decided.
 - (C) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.
 - (D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

(3) Trial Preparation.

A brief description of the efforts the parties have

1 made to resolve disputes over anticipated testimony,
2 exhibits and witnesses.

- 3 (A) Witnesses to be Called. In
4 lieu of FRCP 26(a)(3)(A), a
5 list of all witnesses likely
6 to be called at trial, other
7 than solely for impeachment or
8 rebuttal, together with a
9 brief statement following each
10 name describing the substance
11 of the testimony to be given.
- 12 (B) Estimate of Trial Time. An
13 estimate of the number of
14 court days needed for the
15 presentation of each party's
16 case, indicating possible
17 reductions in time through
18 proposed stipulations, agreed
19 statements of facts, or
20 expedited means of presenting
21 testimony and exhibits.
- 22 (C) Use of Discovery Responses. In
23 lieu of FRCP 26(a)(3)(B), cite
24 possible presentation at trial
25 of evidence, other than solely
26 for impeachment or rebuttal,
27 through use of excerpts from
28 depositions, from
interrogatory answers, or from
responses to requests for
admission. Counsel shall
state any objections to use of
these materials and that
counsel has conferred
respecting such objections.
- 29 (D) Further Discovery or Motions.
30 A statement of all remaining
31 motions, including Daubert
32 motions.

33 (4) **Trial Alternatives and Options.**

- 34 (A) Settlement Discussion. A
35 statement summarizing the
36 status of settlement
37 negotiations and indicating
38 whether further negotiations
39 are likely to be productive.
- 40 (B) Amendments, Dismissals. A
41 statement of requested or

1 proposed amendments to
2 pleadings or dismissals of
3 parties, claims or defenses.

4 (C) Bifurcation, Separate Trial of
5 Issues. A statement of whether
6 bifurcation or a separate
7 trial of specific issues is
8 feasible and desired.

9 (5) **Miscellaneous.**

10 Any other subjects relevant to the trial of the action,
11 or material to its just, speedy and inexpensive
12 determination.

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